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TWO ADDRESSES,

TO

"*The associated Members of the Bar of Philadelphia.*"

PRONOUNCED

BY WILLIAM RAWLE, Esquire.

CHANCELLOR OF THE ASSOCIATION.

PHILADELPHIA.
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TWO ADDRESSES

TO

"The associated Members of the Bar of Philadelphia."

To a person in the habits of contemplating the science of jurisprudence, nothing is more interesting, than to trace the original sources of its formation.

It is gratifying to ascend from existing systems to early days—to discover among contrary or dissimilar manners, in remote periods, the elements of some rule of action, then, perhaps, applied to subjects widely different, perhaps calculated to produce a contrary result—but gradually modified, narrowed or enlarged, according to its nature, as it descends, until the recollection of its parentage is lost in the sense of its utility.

In respect to law in general, there seems to be no other limit to the inquiry, than the commencement of time, no other principle to be adopted than the will of the Creator. With the formation of man, it was given to him to seek society, and to associated man it was given to conceive, adopt, and exercise those rules of relative action, without which he could not possess security or happiness.

Supreme wisdom thus assigned to intellectual being, a power of obtaining felicity through a medium, the more be-

neficial the more it is exercised, and which has the faculty to enlighten while it regulates, and to support while it adorns the moral condition of man.

Wherever society has been discovered, however small its circle, we necessarily find rules of action.

The rights of property, and the punishment of guilt, appear to have been impressed in the mind, from the earliest stage of existence.

He who committed the first recorded crime, passed sentence on himself immediately afterwards—the previous occupation of the victim of his wrath, indicates a separate property in his flock.

With the progress of time and the increase of its objects, law is expanded, and embraces all that form the proper subjects of its care.

Like the vital air of the atmosphere, it surrounds and penetrates all existence—it supports and exhilarates every thing with which it comes in contact, and it comes in contact with every thing—its presence gives health and vigour—its absence death.

Into this universal principle—so sacred in its origin—so imperious in its nature—so just in its intention—we endeavour to resolve whatever we find imposed on us as an obligation, or held up to us as a guide. But such attempts are unsuccessful, if we pursue only the abstract principle, without the aid of historical explanation.

Gravina justly observes, that, "though nature has given to all men the same idea of justice—its aspect is not the same with all. Law is different with different people, because though good government is necessary to all, it cannot be administered to all in the same manner."

After the abolition of royalty—the most numerous class of the people of Rome, felt and lamented the want of definite laws.

Under the exclusive sway of the Patricians, which was

found more oppressive than that of their monarchs, much was left to occasional and arbitrary judgments. The law was on every controversy, rather dictated than expounded, and the people complained of the uncertainty of their property and personal safety.

Their clamours grew too loud to be longer resisted; and either from Greece itself, or from her colonies on the eastern coast of Italy, and in Sicily, a Roman deputation obtained the principles on which the decemvirs constructed the celebrated XII Tables.

The originals have long since disappeared, and it is only from partial references and imperfect quotations, that modern industry has been enabled to piece together what we now must accept, as the ancient and admired code which aristocracy was compelled to submit to, and the popular class rejoiced to receive.

We know too little of the laws of those early days, to be able to trace, with any satisfaction, the aberrations from the Greek originals: but there is a cast of severity in many parts, which can only be accounted for, by admitting that the ruffian descendents of Romulus, required degrees of rigour, unnecessary among the polished and humanized Greeks.

Without adverting to other instances, we must admit the general rule, that laws partake of the manners and the wants of the country, and in a rapid transition from the banks of the Tiber to those of the Delaware, we shall be able to confirm the position.

It will be remembered that the charter of Charles II, conferred on William Penn, with the advice and assent of the freemen of the country, the power to make laws for their own government—and until this was done, the laws of England, in respect to real and personal property, and as to "felonies," were to continue the same "as they shall be for the time being in England."

But the comprehensive mind of Penn, apprehended that

to pour out his colony, without some more definite rules, would produce inconvenience and disorder in the interval, before the powers given by the charter could be regularly exercised.

About a year after receiving the charter, when he had prevailed on a sufficient number to embark with him, he collected some of them together, and proposed a concise code, which was adopted and subscribed on the fifth day of May, 1682.

This was about ten months after the instrument called, "certain conditions and concessions," which bore date July 11th, 1681, and which, with a slight reference to general legislation, only regulated the modes of purchasing and enjoying land, and the conduct to be observed towards the Indians.

The laws may be divided into those which relate to religion.

2. To the rights of property.
3. The rights and the obligations of persons.
4. And to offences.

At that period, the dissenters, continued to be the subjects of severe and impolitic persecution.

Numbers of them had already fled to New England, where with the exception of the colony founded by the celebrated Roger Williams, they adopted an intolerance in religious matters, not less severe, than that which had driven them away, and permitted no other form of worship, nor expressions of belief than their own.

William Penn perceived the impolicy as well as the injustice of such procedures.

To prohibit in others, the freedom of opinion, when they felt its restraint to be a gross injury inflicted on themselves, was manifestly unjust; and casting his eyes on the industrious and discontented inhabitants of the shores of the Rhine, whom he proposed to invite, he perceived its impolicy.

Two emphatic sections in his code, while they encouraged the adventurer, astonished the bigots, and gratified the philosophers of Europe.

Those who believed in one "Almighty and eternal God, the creator, upholder, and ruler of the world," were exempted from all molestation on account of their persuasion, or practice in matters of faith and worship; but the capacity to elect or be elected to office was reserved for the profession of faith in Jesus Christ.

Of this last restriction we can only at present conjecture the cause.

The number of Jews was too inconsiderable to excite apprehensions of their interference; and the believers in Mahomet were not likely to intrude.—Perhaps the capacity and character of the aborigines were not then perfectly known: perhaps it might have occurred to the law-giver that civilization might induce and qualify them to partake in the civil administration of the province, and the price of their admission should be their conversion to Christianity. But this favourable opinion of them could not have been long retained; and in his letter to the free society of traders, in August, 1683, he seems to consider them as a separate and inferior race.

This distinction has not been retained by us. In the constitution of 1776 the door was opened to every believer in a God. And so it continues, with the necessary addition of a belief in a future state of rewards and punishments.

In respect to property, lands as well as goods were expressly subjected to the payment of debts, except where there were legal issue, and then all the goods, and one-third of the lands only.

This was probably intended to promote marriages, but the language is obscure, and it is doubtful whether it is meant to apply to a living debtor, or to the estate of one deceased.

No tax was to be imposed except by virtue of a law,

which probably had reference to some of the illegal exactions of Charles II.

In respect to persons, an honest anxiety is discovered, as well to protect servants from oppression as to compel them to perform their duties.

The fair administration of justice was secured by the establishment of trial by jury.

A liberal protection against causeless or severe imprisonment, has been literally copied in both our constitutions of 1776, and 1790.

From the same little code we may deduce some of our present useful establishments:

Our recording of deeds.

Our registers of wills.

Pleadings only in the English language.

Summonses on ten days notice, and other points of modern practice.

That the Jury shall consist of peers from the vicinage, and that fines shall be moderate, saving mens' contenements, appears to have been borrowed from Magna Charter. In all other instances, we may consider the code as the result of practical impressions, without the pageantry of learning or the aid of professional men.

No organization of courts is provided. It was naturally postponed till the colony should arrive at its land of promise.

William Penn, who had been preceded by two ship loads of adventurers, reached the Delaware in October, 1682, where he found a motley collection of Swedes, Dutch, probably some emigrants from New York, and perhaps a few remnants of Sir Edward Ployden's colonists.

How their laws were composed or their government conducted is not now to be ascertained with much precision.—Considered as a conquered province, perhaps Sir Edward

Andros, Governor of New York, ruled as a Roman Prætor; but there seems to have been some judicial institutions.

A commission is extant from Andros, appointing Ephraim Herman clerk of the courts of New Castle and of Upland; and of the same date a commission was sent to six persons, (Swedish names,) to be justices of peace, and form "a court of judicature."

To them no territorial limit was assigned, and no rule of action prescribed.

It now appeared necessary to go further, to lay down a general code, and to establish the proper modes of enforcing it.

Affording useful principles, and already adapted to the nature of a young colony, the laws agreed upon in England were resorted to as the basis of what were subsequently adopted.

The first procedure was to divide the single county of New Castle into three, adding Kent and Sussex to the former. The name of the county of Upland was changed for that of Chester; and Philadelphia and Buckingham, (the name of the English county whence his family proceeded,) were added to Chester, being then nearer the centre of population. In December, 1682, the first legislative assembly was held, greatly to the joy of the Swedes, whose representatives composed a part of it.

Their labours terminated in passing, on the tenth of December, a code, to which they gave the imposing name of "*The Great Law*, or the body of laws of the province of Pennsylvania and territories thereto belonging."

It consisted of sixty-eight different acts, all expressed concisely, and almost all in plain intelligible language. Except three articles, it is not now in print, but the original remains at Harrisburgh. The laws agreed upon in England may be seen in the appendix to Galloway's edition.

On comparing them with those agreed upon in England, I have discovered no alteration of the general structure, though much is added, which either did not occur, or it was thought premature to insert.

Wilful murder alone was punished with death.

In respect to smaller offences, fine or forfeiture of a proportion of the lands and goods, sometimes with imprisonment superadded, and sometimes as an alternative, were imposed.

It is a deviation from its general mildness, that imprisonment for life is imposed in two cases, that of bigamy, and a second conviction of adultery.

The singular provision of an imprisonment at hard labor during the pleasure of a parent menaced or assaulted, which is also enacted, might likewise extend to an imprisonment for life.

The same anxiety to secure justice to the servant, and fidelity to the master, and in a higher scale, to the employer of the factor, is still apparent.

The rights of property are preserved in nearly the same manner.

The judicial power is vested in county courts, who are to hold monthly sessions; in a provincial court, which is to meet quarterly, "to hear appeals," and in the provincial council, which is called "the last jurisdiction."

Two witnesses, "in all cases," were "necessary to judgment:" neither an oath nor affirmation were required of them; a solemn promise in court to tell the truth, the whole truth, and nothing but the truth, was accepted, and perhaps alone admitted; but the punishment of falsehood was heavy:

1. To undergo such damage or penalty as the party against whom he testified "did or should undergo."
2. Public exposure.
3. Loss of future credit.

The concluding article appears to me admirable, and did the size and number of our laws now admit it, I should think it worthy of immediate adoption.

"The laws shall be one of the books taught in schools." Such an early familiarity with its civic institutions would cause a deep and permanent tincture in the youthful mind; and if a brief and plain analysis of the constitution, with a correct abridgment of the laws, were substituted for some of those desultory compilations which are now in use, we might have more young Catos who would not require instruction of the crimes of future Syllas.

Many of these laws were repealed by the king in council; but with some variations they may be traced in those which at different periods afterwards were adopted.

The county courts were speedily organized. The magistrates soon entered on their functions; and it will not be uninteresting to notice some of their proceedings.

The original minutes of the provincial council are preserved at Harrisburg; and so early as the fourth month, (July,) 1683, a case is recorded to have come before them by appeal from the court at Philadelphia relative to the right to some land in Bucks county, which terminated in the extraordinary course of imposing a fine of forty pounds on the court itself, for having exceeded their jurisdiction, "as the law saith that causes shall be first tried where they arise."—It probably was an ejectment.

The governor and council appear also to have exercised original jurisdiction, both civil and criminal.

In the same year, 1683, a warrant was issued by them against one Pickering, "for putting off bad money."

A grand jury, and after bill found, a petty jury, were summoned.

Pickering and his associates were convicted.

The governor passed sentence that the defendants should

make compensation to the sufferers, and pay a fine of forty pounds.

A more curious trial, before the same tribunal, soon succeeded.

A belief in the existence of witches, and a terror of their craft, are even now the torment of vulgar minds, but in those days the belief was deeply rooted, and politically injurious.

The mind of Penn was above such follies; but his knowledge of mankind led him to prefer an apparent acquiescence in popular opinion, to open hostility against it.

He suffered an indictment of witchcraft to be preferred against a woman, who, from her name, and the circumstance of her being assisted by an interpreter, was probably a Swede.

The evidence against her is detailed in the minutes of the council. It was slight and indirect.

The governor charged the jury, and it is to be regretted that his charge was not also preserved.

The verdict is evidence either of the simplicity of the times or of the same policy which I have attributed to W. Penn.

Margaret Mattson was found "guilty of *having the common fame of being a witch;* but not guilty in manner and form as she stands indicted."

She was laid under a recognizance for her good behaviour for six months.

The council continued to exercise both original and appellate jurisdiction, including in the former, admiralty causes, during part of the following year; but when the proprietor was about leaving the country he issued what seems to have been the first commission to the provincial judges. (1. Proud. 286.)

This is an interesting epoch, as it gives us the foundation of that mixed system of law and equity which, with a temporary exception, has ever since prevailed here.

The provincial court thus established was to meet twice every year, in the "town of Philadelphia," and "to go the circuits" every spring and fall in each county; to have the hearing and determining of all appeals from inferior courts; also all trials of titles of lands, and all causes, as well criminal as civil, both in *law and equity*, not determinable by the respective county courts.

This short historical view accounts for and explains a part of our Pennsylvania jurisprudence.

It shows that circumstances, more than profound or scientific deliberation, occasioned in the beginning the combination of various powers in the same tribunals.

Thus civil law, and criminal law, common law, and equity, were mixed and administered, no doubt with the best motives, and in the purest manner, but with a disregard of many useful forms, and salutary discriminations.

In respect to form, indeed, those of law, as far as can be traced, were adhered to. Bills in equity, those admirable organs for telling in a plain intelligible manner the whole of a grievance, however complicated, and of extracting from the opponent's conscience what his policy would wish to conceal, were unknown in these courts.

A court of chancery found, it is true, a short and unpopular existence among us. It was introduced by Sir W. Keith, in 1720, against the opinion of those whom he consulted as to his power to erect it. I doubt whether its proceedings are to be found, and it cannot now be ascertained whether the dissatisfaction it excited is to be justly imputed to the nature of the tribunal itself, or to errors in its administration. Certain it is that for a long time after its abolition an uniform prejudice against courts of chancery existed among us.

But the present constitution of Pennsylvania, after extending the powers of the supreme court and court of common pleas to three cases of chancery character, authorises the

legislature to empower these courts to grant relief in equity, or to vest such power in other courts, thus enabling it to create a court or courts of chancery.

It cannot be denied that the present system has a tendency to introduce a principle of decision which ought to be avoided. It too often leads us away from the safety of established precedent to inquire into the particular merits, and what is supposed to be the moral justice of a case.

To unlettered minds this is not objectionable.

It even has something attractive and fascinating.

It is supposed that the object of law being to dispense justice:—justice, however, it may be obtained, must be acceptable.

But it is a sound political principle, as laid down by *Montesquieu*, that, "in republics most emphatically, the nature of the constitution requires judges to follow almost the letter of the law.

"In despotic governments," he observes, "there are no laws; the judge himself is his own rule.

"There are laws in monarchies—if explicit, the judge conforms to them—if otherwise, he endeavours to investigate their spirit."

The last is the true rule. But to continue a system which reduces the number of explicit rules of actions is, in effect, to introduce one of the evils of despotism.

If, with us, the reference to principles of equity is unavoidably vague and uncertain, if its aid can be only partially obtained, if it is doubtful before hand whether it will be referred to at all, if in fact there is no obligation on the judge to adopt it, and he is guided only by the moral sense to assume or disregard it, it is impossible not to perceive, and it would be wrong not to acknowledge, the imperfection of our system.

It may indeed be said, that equity has been repeatedly de-

clared to be part of the law of Pennsylvania, and of course that it is obligatory on courts to enforce it.

And there can be no doubt that in general this obligation is felt, and the effort made accordingly; but I may refer to the well-known case of Pollard *v.* Shaeffer, (1 Dal. 212,) for the description, in the language of C. J. M'Kean, of that sort of equity which it was (then at least) supposed ought to be enforced.

"A court of chancery (he observes) judges of every case according to the peculiar circumstances attending it, and is bound not to suffer an act of injustice to prevail."

Such is the sort of equity which is generally administered.

A superior system is gradually being formed in our supreme court, but it has many impediments in its progress.

It will at first appear singular that a remedy for a defect in substance should be proposed in a reference to form.

Yet it appears to me that the true and perhaps the only relief from the occasional inconveniences of our jurisprudence, will be afforded by the adoption of those forms which the experience of their utility has introduced into other countries.

How frequently are our courts embarrassed by the difficulty of bending legal form to the principles of technical equity, or even to the influence of the moral sense.

A familiar instance may be adverted to. In trover there is no set off:—a case arises in which the possessor of a chattel may have a just right to retain it till payment of a sum of money not forming in strictness a lien on it.—Our courts have in some instances allowed the equitable right to be given in evidence as a matter of defence.

But what counsel beforehand could assure his client that this would be allowed. In Durrow *v.* Kelly, (1 Dal. 144,) Shippen president expressly declared that in that case "being a court of law, we cannot take on ourselves to act as a court of chancery." The case itself was rightly decided. It

is referred to on account of the declaration made by the court. Judge Shippen was one of the soundest of our lawyers; in personal character mild and amiable; always inclined to temper the rigorous obligations of precedent by reasonable modifications, where he felt himself at liberty to do so, but always resolute to retain the bulwark of law, against irregular and desultory invasion. We may perceive and admire his firmness in the case of Shewell *v.* Fell, (3 Yeates, 20.)

In respect to real estate we all know the use that is made of our flexible action of ejectment.

To some of these modes of relief, there is an objection of a serious nature.

The functions of the court are intermingled with the powers of the jury.

Before the revolution, when the bench was rarely graced by professional characters, juries were considered almost the same as chancellors.

I have heard the epithet applied to them, and the practice defended, by old practitioners.

Since the beneficial change which has taken place in the appointment of judges, a certain degree of control has naturally ensued; but much is still unavoidably left to the jury.

To form and try an issue on a single point, and to confine their attention and their verdict merely to that point, has become unusual.

Juries sometimes persist in deciding on what they think the "right" of a case; and if we are thrown into an ocean without a compass when we depend on the mere moral impressions of Judges, how much more uncertain is the result of a suit committed to twelve men, however honest and upright, collected by ballot, unused to professional intricacy and scientific principles, and whose decision is not binding on another jury either in the same or an exactly similar case that may succeed. The case of Witman *v.* Ely, (4 Serg. and

Raw. 460.) is a strong instance of assumption of power by a jury. The difficulties I have adverted to are apparent in this case; and the luminous view taken by judge Duncan of this mode of administering justice merits your attention. The only remedy which the court could afford was to reverse the judgment and order a venire de novo. But if it is a case of any notoriety prejudices are often raised, parties formed, and other juries follow in the same track of obstinate error. This is more frequently the case in the country, where the comparative paucity of general subjects renders the proceedings of courts more attractive than they are in town.

I am not to be considered as deraigning the value of trial by jury.

While three cardinal rights are preserved,

1. Independence of judges.
2. Habeas corpus.
3. Trial by jury,

we shall have nothing to fear.

It is the practical embarrassments arising from the nature of our judicial system, derived, as has been observed, merely from local circumstances, that seem to form a just subject of complaint.

To confer equitable powers on the courts of law under the clause of the constitution which authorises the legislature to do so, would, of course, give us the benefit of the useful chancery forms.

The bill for specific performance of a contract, by means of which every part of the agreement may be enforced, not on vague and varying elements, but on sound and long-established principles; the injunction bill; and above all the bill of discovery, for which we are forced to substitute, often ineffectually, the notice to produce books and papers; the immediate effect of adopting these and other forms would be precision of practice, and adequacy of relief; and they would gradually lead to high results. They would place our system

on the eminent and useful ground of fixed and permanent principle; They would render equity what it ought to be, as described by *Blackstone*, a scientific system, founded on just and settled principles, applicable on general grounds, to particular cases.

In fact it is time to reduce the uncertain corruscations of Pennsylvania equity, to the safe and steady light of chancery.

If the legislature could be induced to exercise their constitutional powers, the same general terms which have been made use of by congress, in the formation of their judiciary system, would answer the purpose.

These remarks are respectfully submitted to my brethren. Whether it is expedient to take them into consideration the society will determine.

Some perhaps may dread the danger of innovation, on a practice which has continued for near a century and an half. Others may think that error can receive no sanction from time, and that while the genius of our countrymen has, at least since the commencement of the revolution, been so active in almost every sort of political reformation, we ought not to decline the performance of a duty because of its toil, nor the improvement of a system on account of its antiquity.

THE GREAT LAW,

OR,

The Body of Laws of ye province of Pennsylvania and territorys thereunto belonging, past at an assembly at Chester, als. Upland, the seventh day of ye tenth month, December, 1682.

WHEREAS ye glory of Almighty God, and ye good of mankind, is ye reason and end of government, and therefore government in itself is a venerable ordinance of God; and fforasmuch as it is principally desired and intended by ye proprietary, and governor, and ye freemen, of ye province of Pennsylvania, and territory's thereunto belonging, to make and establish such laws as shall best preserve true Christians and civil liberty, in opposition to all unchristian, licentious, and unjust practices, whereby God may have his due, Cæsar his due, and ye people their due, from tiranny and oppression of ye one side, and insolency and licentiousness of ye other, so that ye best and firmest foundation may be laid for ye present and future happiness of both ye governor and people of this province and territories aforesaid, and their posterity.—Be it therefore enacted, by William Penn, proprietary and governor, by and with ye advice and consent of ye deputys of ye freemen of this province, and counties

aforesaid, in assembly mett, and by ye authority of ye same, that these following chapters and paragraphs shall be ye laws of Pennsylvania, and ye territorys thereof.

Almighty God being only Lord of conscience, father of lights and spirits, and ye author as well as object of all divine knowledge, faith, and worship, who only can enlighten ye minde and persuade and convince ye understanding of people, in due reverance to his soveranty over ye souls of mankind. It is enacted by ye authority aforesaid yt no person now or at any time hereafter living in this province, who shall confess and acknowledge one Almighty God to be ye creator, upholder, and ruler of ye world, and that professeth him or herself obliged in conscience to live peaceably and justly under ye civil government, shall in any wise be molested or prejudiced for his or her concientious perswasion or practice, nor shall he or she at any time be compelled to frequent or maintain any religious worship, place, or ministry whatever, contrary to his or her mind; but shall freely and fully enjoy his or her Christian liberty in yt respect, without any interruption or reflection; and if any person shall abuse or deride any other, for his or her different persuasion and practice in matter of religion, such shall be lookt upon as a disturber of ye peace, and be punished accordingly. But to ye end that looseness, irreligion, and atheisme may not creep in under pretence of conscience in this province—Be it further enacted by ye authority aforesaid, that according to the good example of the primitive Christians, and for ye ease of ye creation, every first day of ye week, called ye Lord's day, people shall abstain from their common toyle and labour, that whether masters, parents, children, or servants, they may ye better dispose themselves to read ye scriptures of truth at home, or to frequent such meetings of religious worship abroad as may best sute their respective perswasions.

And be it further enacted, by ye authority aforesaid, that all officers and persons commissionated and imployed in ye

service of ye government of this province, and all members and deputys elected to serve in assembly thereof, and all that have right to elect such deputies, shall be such as profess and declare they believe in Jesus Christ to be ye son of God and saviour of ye world, and yt are not convicted of ill fame, or unsober and dishonest conversation, and yt are of one-and-twenty years of age at least. And be it further enacted, by ye authority aforesaid, that whosoever shall swear in their conversation by ye name of God or Christ or Jesus, being legally convicted thereof, shall pay for every such offence five shillings, or suffer five days' imprisonment in ye house of correction at hard labour, to ye behoofe of ye publik, and be fedd with bread and water only during yt time.

And be it further enacted, by ye authority aforesaid, that whosoever shall swear by any other thing or name, and is legally convicted thereof, shall for every such offence pay half a crown, or suffer three days' imprisonment in ye house of correction at hard labor, having only bread and water for their sustenance.

And be it further enacted, by ye authority aforesaid, for ye better preventing of corrupt comunication, that whosoever shall speak loosely and profanely of Almighty God, Christ Jesus, the holy spirit, or ye scriptures of truth, and is legally convicted thereof, shall for every such offence pay five shillings, or suffer five days' imprisonment in ye house of correction at hard labor, to ye behoofe of ye publick, and be fedd with bread and water only during that time.

And be it further enacted, by ye authority aforesaid, that whosoever shall in their conversation at any time curse himself or another, or any thing belonging to himself or any other, and is legally convicted thereof, shall pay for every such offence five shillings, or suffer five days' imprisonment as aforesaid.

And be it further enacted, by ye authority aforesaid, that if any person shall with malice, or premeditation, kill, or be

accessary to ye death of another person, man, woman, or child, being legally convicted thereof, shall, according to ye law of God and all nations, suffer death; and that ye estates of all capitall offenders shall goe one half to ye next of kin of ye sufferer, and ye remainder to ye next kin of ye criminall.

And be it further enacted, by ye authority aforesaid, that all persons guilty of manslaughter, or chance-medly, shall be punished according to ye nature and circumstance of ye offence.

And be it further enacted, by ye authority aforesaid, that whosoever defileth the marriage bed, by lying with another woman or man than their own wife or husband, being legally convicted thereof, shall for ye first offence bee publickly wippt, and suffer one whole year's imprisonment in ye house of correction at hard labour, to ye behoofe of ye publick, and longer if ye magistrate see meet; and both he and ye woman to be lyable to a bill of divorcement, if required by ye grieved husband or wife, within ye said terme of one whole year after conviction; and for ye second offence, imprisonment in manner aforesaid during life; and if ye party with whom ye husband or wife shall defile their beds, be unmarried, for ye first offence they shall suffer half a year's imprisonment, in ye manner aforesaid; and for ye second offence imprisonment for life.

And be it further enacted, by ye authority aforesaid, that if any person shall be legally convicted of incest, which is uncleanness betwixt near relations in blood, such shall forfeit one-half of his estate, and both suffer imprisonment a whole year in ye house of correction at hard labour; and for ye second offence, imprisonment, in manner aforesaid, for life.

And be it further enacted, by ye authority aforesaid, that if any person shall be legally convicted of ye unnaturall sinn of sodomy, or joyning with beasts, such person shall be wipped, and forfeit one-third part of his or her estate, and work

six months in ye house of correction at hard labour; and for ye second offence, imprisonment, as aforesaid, during life.

And be it further enacted, by ye authority aforesaid, that whosoever shall be proved guilty of a rape or ravishment, that is forcing a maid, widow or wife, shall forfeit one-third of his estate to ye parent of ye said maid, and for want of a parent, to ye said maid; and if a widow, to ye said widow; and if a wife, to ye husband of ye said wife, and be wipped, and suffer a year's imprisonment in ye house of correction at hard labour; and for ye second offence, imprisonment, in manner aforesaid, during life.

And be it further enacted, by ye authority aforesaid, that whosoever shall be convicted of uncleaness or comiting of fornication, that is if any single man shall defile a single woman, they shall suffer three months' imprisonment in ye house of correction at hard labour, and after ye expiracon of ye said term, shall take one another in marriage, and live as man and wife together; but if ye man be married, he shall forfeit one-third of his estate, and both be imprisoned as aforesaid. And whosoever shall be convicted of speaking an obscene or an unclean word, shall for every such offence pay one shilling, or sitt in ye stocks two hours.

And be it further enacted, by ye authority aforesaid, that whosoever shall be convicted of having two wives, or two husbands, shall be imprisoned all their life time in ye house of correction at hard labour, to ye behoof of his former wife or children, or her former husband or children; and if a man or woman being unmarried doe knowingly marry ye husband or wife of another person, he or she shall be punished after ye same manner aforesaid.

And be it further enacted, by ye authority aforesaid, that every person disordering and abusing himself with drink unto drunkeness, being legally convicted thereof, shall for ye first time pay five shillings, or worke five days in ye house of correction at hard labour, and be fed only with bread and

water; and for ye second offence, and ever after, tenn shillings, or tenn days' labor, as aforesaid.

And be it further enacted, by ye authority aforesaid, that they who doe suffer such excess of drinking at their houses, shall be lyable to ye same punishment with ye drunkard.

And be it further enacted, by ye authority aforesaid, that if any person doe drink healths which may provoke people to unnecessary and excessive drinking, being legally convicted thereof, shall for every such offence forfeit five shillings; and whosoever shall pledge ye same shall be lyable to ye same punishment.

Whereas divers persons, as English, Dutch, Swedes, &c. have been want to sell to ye Indians rhum, and brandy, and such like distill'd spirits, though they know ye said Indians are not able to govern themselves in ye use thereof, but doe comonly drink of it to such excess as makes them sometimes to destroy one another, and grieviously anoy and disquiet ye people of this province, and peradventure those of neighbouring governments, whereby they make ye poor natives worse and not better for their coming among them, which is an heinious offence to God, and a reproach to ye blessed name of Christ and his holy religion. It is therefore enacted, by ye authority aforesaid, that no person within this province doe from henceforth presume to sell or exchange any rhum or brandy, or any strong liquors, at any time to any Indian within this province; and if any one shall offend therein, ye person so convicted shall, for every such offence, pay five pounds.

And be it further enacted, by ye authority aforesaid, that whosoever shall be convicted of willfully fireing any man's house, warehouse, outhouse, barns, stacks or ricks of corne, vessels, or boats, in any part of this province, or teritory thereunto annexed, every such offender shall be liable to make satisfaction double ye value, and suffer imprisonment for one year in ye house of correction, and bear such corr-

porall punishment as shall be inflicted by ye court of justice of that county where ye party offending hath committed ye fact.

And be it further enacted, by ye authority aforesaid, that if any person shall break into ye dwelling house of any other to ye affrighting of any dwelling therein, and shall intend or offer to take any thing out of ye said house, such person convicted thereof shall make fourfold satisfaction, and suffer three month's imprisonment at hard labour, in ye house of correction: and if ye party offending be not able to make restitution, he or she shall be imprisoned seaven years.

And be it further enacted, by ye authority aforesaid that ye lands and goods of theives and felons shall be liable to make satisfaction to ye party wronged fourfold ye value, and for want of lands or goods, ye theif or felon shall be bondsman to worke in ye common prison, or workhouse, or otherwise, till ye party injured be satisfied.

And be it further enacted, by ye authority aforesaid, that if any person shall violently or forcibly enter ye house or possessions of any other, being duely convicted thereof, shall be punished as a breaker of ye peace, and make such satisfaction to ye party aggrieved as ye circumstance of ye fault will bear.

And be it further enacted, by ye authority aforesaid, that if any persons, to ye number of three, shall meet together with clubbs, staves, or any hurtful weapon, to ye terror of any of ye peaceable people of this province, and comitt, or design to comitt, any violence or injury upon ye person or goods of any of ye said inhabitants, they shall be reputed and punished as rioters, and that act of terror and violence, or design of violence, accounted a riot.

And be it further enacted, by ye authority aforesaid, that whosoever shall assault or menace a parent, and shall be duely proved guilty thereof, shall be comitted to ye house of

correction, and there remain at hard labour during ye pleasure of ye said parent.

And be it further enacted, by ye authority aforesaid, that if any person shall assault or menace a magistrate, and be duely convicted thereof, he shall be fined according to ye nature of ye fact, and be comitted to ye house of correction at hard labour for one month after conviction.

And be it further enacted, by ye authority aforesaid, that if any servant assault or menace his or her master or mistress, he shall be punished at ye discretion of two justices of ye peace, so it be suitable to ye nature of ye offence.

And be it further enacted, by ye authority aforesaid, that any person convicted of an assault or battery, comitted by him on another person, he shall be reputed a breaker of ye peace, and shall be punished according to ye nature and circumstance of ye fact.

And be it further enacted, by ye authority aforesaid, that whosoever shall challenge another person to fight, he that challengeth, and he that accepteth ye challege, shall for every such offence pay five pounds, or suffer three months' imprisonment in ye house of correction at hard labour.

And be it further enacted, by ye authority aforesaid, that whosoever shall introduce into this province, or frequent such rude and riotous sports and practices, as prizes, stage plays, maskes, revells, bulbaites, cockfighting, with such like, being convicted thereof, shall be reputed and fined as breakers of ye peace, and suffer at least tenn days' imprisonment at hard labour in ye house of correction, or forfeit twenty shillings.

And be it further enacted, by ye authority aforesaid, that if any person be convicted of playing at cards, dice, lotterys, or such like inticing, vain, and evil sports and games, such persons shall for every such offence pay five shillings, or suffer five days' imprisonment at hard labour in ye house of correction, &c.

And be it further enacted, by ye authority aforesaid, that if any person shall speak, write, or act, any thing tending to sedition or disturbance of ye peace, and be duly convicted thereof, ye party so offending shall for every such offence be fin'd according to ye nature and circumstance of ye fact, provided it be not less than twenty shillings.

And be it further enacted, by ye authority aforesaid, that if any person speak slightingly or carry themselves abusively against any magistrate, or person in office, being duely convicted thereof, shall for every such offence suffer according to ye quality of yé magistrate, and nature of ye offence, always provided it be not less than twenty shillings, or ten days' imprisonment at hard labour in ye house of correction.

And be it further enacted, by ye authority aforesaid, that all scandalous and malicious reporters, defamers, and spreaders of false news, whether against magistrates or private persons, being duely convicted thereof, shall be accordingly severely punished, as enymys to ye peace and concord of ye province.

And be it further enacted, by ye authority aforesaid, that if any person shall be clamorous, scolding or railing with their tongues, upon complaint, and full proof thereof, before a justice of ye peace, ye said justice shall for every such offence comitt such person to ye house of correction, and there remaine three days at hard labour.

And to prevent clandestine, loose, and unseemly proceedings about marriage; be it enacted by ye authority aforesaid, That all marriages not forbidden by ye law of God, shall be encouraged, but ye parents or guardians, shall be first consulted, and ye partys clearness of all other engagements assured by a certificate from credible persons; and ye marriage shall be published before it be solemnized, and it shall be solemnized by taking and owning one another as husband, and wife, before sufficient witnesses, and a certificate of ye whole, under ye hands of parties and witnesses, shall be

brought to ye proper register of ye county where they are married, and shall be registered in his office.

And be it further enacted by ye authority aforesaid, That no person, be it either widdower or widdow, shall contract marriage, much less marry, under one year after ye decease of his wife or her husband.

And be it further enacted by ye authority aforesaid, That if any person shall fall into decay and poverty, and be unable to maintain themselves and children, with their honest endeavour; or who shall die and leave poor orphants, that upon complaint to ye next justices of ye peace, of ye same county, ye said justices finding ye complaint to be true, shall make provision for them, in such way as they shall see convenient, till ye next county court, and that, then, care be taken for their confortable subsistence.

And to prevent exaction in publicke houses: be it further enacted by ye authority aforesaid, That all strong beer and ale made or barly mault, shall be sould for not above two pennys a full Winchester quart. And all beer made of molossis, shall not exceed one penny a quart.

And to prevent fraud in measure, and to reduce all forreigne measures here to ye English standard, be it further enacted by ye authority aforesaid, That ye measures of this province, shall be according to ye standard of weights and measures in England, that is to say a bushel shall contain eight gallons, according to ye Winchester measure, and all weights to be avordupois, which hath sixteen ounces to ye pound; within three months after ye first session of this assembly.

And be it further enacted by ye authority aforesaid, That no person presume to keep an ordinary, without a licence first obtained of ye governor, and to ye end, yt all travellers and such as are not housekeepers may be reasonably accomodated, in places where ordinaries now are, or shall be hereafter erected; no such keeper of such ordinary shall de-

mand above six pennys a meal by ye head, which meal shall consist of beef or porke, or such like produce of ye country, and small-beer; and of a footman, he shall not demand above two pence, per night for his bed; and of a horseman nothing, he paying six pennys a night for his horses hay.

And be it further enacted, by ye authority aforesaid, That ye days of ye weeke and ye months of ye year, shall be called as in Scripture, and not by heathen names, (as are vulgarly used) as ye first, second, and third daies of ye week, and first, second, and third months of ye year, &c. beginning with ye day called Sunday, and ye month called March.

And be it further enacted, by ye authority aforesaid, To ye end, yt justice may be faithfully and openly done, according to law, that all courts of justice shall be open, and justice shall not be sold, denied, nor delayed. And in every county there shall be one court erected, to which ye inhabitants thereof may every month repair for justice, and in case any person shall hold himself aggrieved by ye sentence of ye said county court; that such persons may appeal to ye Provincial court, which shall sitt quarterly, and consist of not less than five judges, ye appellant giving security for ye charges of ye sute, and no further appeal to be admitted till ye appellant deposite in court, ye sum he is condemned to pay, and give security in case he be cast by ye last jurisdiction, which shall be ye Provinciall councill.

And be it further enacted, by ye authority aforesaid, That in all courts, all persons, of all perswasions, may freely appear, in their own way, and according to their own manner, and there personally plead their own cause themselves, or if unable by their friends, and ye first process shall be ye exhibition of ye complaint in court, fourteen days before ye tryall, and that ye defendant be prepared for his defence, he or she shall be sumoned, no less than tenn days before, and a copy of ye complaint delivered him or her, at his or her dwelling house, to answer unto; but before ye complaint of

any person shall be received, he or she shall solemnly declare in open court, that he or she believes, in his or her conscience, his or her cause is just; and if ye party complained against shall, notwithstanding, refuse to appear, ye planetiffe shall have judgement against ye defendant by default.

And be it further enacted, by ye authority aforesaid, That there shall be two credible wittnesses in all cases, in order to judgement, and all witnesses coming or called to testify their knowledge, in or to any matter or thing, in any court, or before any lawfull authority, within ye said province, shall there give, or deliver in their evidence or testimony, by solemnly promising to speake ye truth, ye whole truth, and nothing but ye truth, to the matter or thing in question; and in case any person so called to evidence, shall afterwards be convicted of willfull falshood, such person shall suffer and undergoe, such damage or penalty as the person or persons against whom, he or she bore false wittness, did or should undergoe, and shall also make satisfaction to ye party wronged; and be publickly exposed for a false wittness, never to be credited again in any court, or before any magistrate in ye said province; and whosoever shall be convicted of lying in conversation, shall for every such offence, pay half a crown or suffer three days imprisonment, in the house of correction at hard labour.

And be it further enacted, by ye authority aforesaid, That all pleading processes and records in court, shall be short and in English, and in an ordinary and plain character, yt they may be easily read and understood, and justice speedily administered.

And be it further enacted, by ye authority aforesaid, That all tryalls in civil cases, shall be by twelve men, and as near as may be, peers or equalls, and of ye neibourhood, and men without just exception; and in criminall matters of life there shall be first twenty-four returned by ye sheriff, for a grand inquest, of whom twelve, at least, shall find ye complaint to be

true, and then forty-eight shall be likewise returned by ye sheriff, of whom twelve shall have ye finaile judgement, but reasonable challenges shall be always admitted, against any or all of them.

And be it further enacted, by ye authority aforesaid, That all fines shall be moderate, saving contenements, marchandize, or wainage, which is to say, ye furniture of their calling and means of livelyhood.

And be it further enacted, by ye authority aforesaid, That all fees and salaries in all cases, shall be moderate and limited by ye governor and assembly, and be hung up in a table in every respective court, and whosever shall be convicted of taking more, shall pay twofold, and be dismissed his imployment; one moyety of which shall goe to ye party wronged. And yt all persons convicted of bribery and extortion shall forfeit double the same.

And be it further enacted, by ye authority aforesaid, For avoiding of numerous sutes, if two men dealing together, be indebted to each other upon bills, bonds, bargains, or ye like, provided they be of equal truth and cleareness, ye defendant shall in his answer acknowledge ye debt which ye plaintiffe demandeth, and defaulke what ye plaintiffe owes to him upon the like cleareness.

And be it further enacted, by ye authority aforesaid, That if in case any man arrest another going out ye province, he shall be ready with his declaration and evidence ye next day, and shall put in security to pay ye charges and damages sustained by ye party arrested, if he shall be found in ye wrong.

And be it further enacted, by ye authority aforesaid, That all bargains, promises, and agreements, about buying and selling, being made appear by sufficient evidence, shall stand good and firm, and such as shall violate ye same, he or she shall for every such offence, pay twice ye valew to the party wronged.

And be it further enacted, by ye authority aforesaid, To

prevent frauds and vexatious sutes within ye said province, all charters, gifts grants, and conveyances of land, (except leases for a year or under) and all bills, bonds, and specialities above five pounds, and not under three months, made in ye said province, shall be inrolled or registered in ye publick inrollment office of ye said province, within ye space of two months next after the making thereof, else to be voyd in law; and all deeds, grants, and conveyances of land, (except as aforesaid) within ye said province, and made out of ye said province, shall be inrolled or registered as aforesaid, within six months next after ye making thereof, and settling and constituting an inrollment office or registry within ye said province, else to be voyd in law against all persons whatsoever; and in case ye deeds of purchase in England, made of lands in this province, should be lost by ye way, and so cannot be registered, coppies of the deeds attested by a public notary, shall be of equal force therein.

And be it further enacted, by ye authority aforesaid, That all wills in writing, attested by two sufficient wittnesses, shall be of ye same force as to land, as other conveyances being legally proved within forty days, either within or without ye said province.

And be it further enacted, by ye authority aforesaid, That ye will of no person shall be of force, that is not in his or her right mind, and usuall understanding at the making thereof.

And be it further enacted, by ye authority aforesaid, That ye estates of intestates, shall goe to ye wife and to ye children, and if no wife be living at ye time of death, all ye estate shall goe to ye children, and if no children, one third to ye governor, and two thirds to ye next of kin.

And be it further enacted, by ye authority aforesaid, That there shall be a registry for births, marriages, burialls, wills, ye names of executors, and guardians, and trustees, and letters of administration, distinct from ye other registry.

And be it further enacted, by ye authority aforesaid, That

servants shall not be kept longer than their time, and such as are carefull, shall be both justly and kindly used in their service, and putt in fitting equipage at the expiration thereof, according to custom, and such as runn away and serve not their time, when caught shall serve twice ye time he or she was absent, and pay ye charges, or serve out ye value after their time is expired; and if any master abuse his servant, on complaint to ye next justice of ye peace, he shall take care to redress ye said grieviance.

And be it further enacted, by ye authority aforesaid, That there shall be a registry for all servants, where their names, time, wages, and days of freedom or payment, shall be registered.

And be it further enacted, by ye authority aforesaid, That all factors or correspondents in this province, wronging their imployers, shall make satisfaction, and one-third over to their said imployers, and in case of ye death of any such factor or correspondent, the committee of trade, shall take care to secure so much of ye deceased parties estates as belongs to his said respective imployers.

And be it further enacted, by ye authority aforesaid, That all defacers or corruptors of charters, gifts, grants, bonds, bills, wills, contracts, or conveyances; or that shall deface or falcify any enrolment, registry, or record, within this province, shall make double satisfaction for ye same, half whereof shall goe to ye party wronged, and they shall be dismissed of all places of trust, and be publickly disgraced as false persons.

And be it further enacted, by ye authority aforesaid, That all lands and goods shall be lyable to pay debts, except where there be legall issue, and then all goods, and one half of ye land, only in case ye land was bought before ye debts were contracted.

And be it further enacted, by ye authority aforesaid, That all prisoners shall be bailable by sufficient sureites, unless in

capitall offences, where ye proof is evident, or ye presumption great, and every quarter of a year there shall be a goal delivery in every county, where imprisonment is not ye punishment.

And be it further enacted, by ye authority aforesaid, That all prisons, shall be workhouses for felons, theives, vagrants, and loose abusive and idle persons, whereof one shall be in every county.

And be it further enacted, by ye authority aforesaid, That goalers shall not oppress their prisoners, and that all prisons shall be free as to room, and all prisoners shall have libertie to provide themselves beding, food, and other necessarys during their imprisonment, except such whose punishment by law will not admitt of that liberty. And be it further enacted, by ye authority aforesaid, That any person wrongfully imprisoned shall have double damages against ye imformer or prosecutor.

And be it further enacted, by ye authority aforesaid, That as in divers laws ye penalty of ye offences, is thus expressed, either a certain sum of money or certain time of imprisonment, at hard labour in ye house of correction, it shall be left to ye choice of ye civill magistrate, which of ye punishments he will inflict upon ye person so offending. That whosever shall know any of ye aforementioned offences, and informe ye civill magistrate thereof, shall have one-third of ye fine, and if any one shall conceal such person, he or she shall pay halfe ye fine due from ye guilty person.

And to the end that it may be known, who those are, that in this province and territory, thereunto belonging, have right of freemen, to chuse or be chosen, and with ye proprietary and governor, make and enact laws that every inhabitant of ye said province and territorys anexed, that is or shall be a purchaser of one hundred acres of land, and hath seated ye same, his heirs and assigns, and every person who shall have paid his passage, and taken up one hundred acres of land at

one penny an acre, and hath seated the same. And every person that hath been a servant or bondsman, and is free by services, that shall have taken up his fifty acres of land, and seated ye same, and every inhabitant, artifficer, or other resident in ye said province, that pay scott and lott to ye governor, shall be deemed and accounted a freeman of this province and territory thereof, and such only shall have right of election or being elected, to any service in ye government thereof. Provided also, and be it further enacted, by ye authority aforesaid, That all persons holding any office, in this province or ye territory's thereunto belonging, or that hath or shall have right to chuse or be chosen members in assembly, shall be such as shall first subscribe this following declaration: I, A. B. doe hereby freely acknowledge, and solemly declare, and promise fidelity, and lawfull obedience to William Penn, son and heir of Sir William Penn deceased, and his heirs and assigns, as rightfull proprietary and governor of ye same, according to ye kings letters patent, and deeds of grant and feoffment, from James Duke of York and Albany, &c. And that I will never act nor doe by word or deed, directly or indirectly, any thing, nor consent to nor conceal any person or thing whatsoever, to ye breach of this solemn engagement. In witness of which I have hereunto sett my hand, this day of in ye year

A. B.

And that all elections may not be corruptly managed, upon which ye present and future good of ye province so much depends, that all elections of members or representatives of ye people and freemen of ye province of Pennsilvania and territorys annexed, to serve in ye assembly thereof, shall be free and voluntary, and that ye elector that shall receive any reward or gift in meat, drink, moneys, or otherwise, shall forfeit his right to elect such; and such persons as shall give, promise, or bestow any such reward as aforesaid, to be elected, shall forfeit his election, and be thereby incapable to

s. ve as aforesaid. And ye assembly shall be sole judges of ye regularity or irregularity of ye elections of ye members thereof.

And that ye people may be fully secured in ye enjoyment of yr property,—Be it further enacted, by ye authority aforesaid, that no money or goods shall be raised upon or paid by any of ye people of this province, and territorys annexed, by way of a publick tax, custom or contribution, but by a law for that purpose, made by ye government and freemen of ye said province, and territory thereof; and whosoever shall levy, collect, receive, or pay any money or goods contrary thereunto, shall be held and punished as a publick enemy to ye province, and a betrayer of ye liberty of ye people; and that no publick tax at any time shall continue longer than ye space of one whole year.

And be it further enacted, by ye authority aforesaid, that ye laws of this province, from time to time, shall be published and printed, that every person may have ye knowledge thereof; and that they shall be one of ye books taught in ye schooles of this province, and territory thereof.

And be it further enacted, by ye authority aforesaid, that all other matters and things, not herein provided for, which shall and may concerne the publick good, justice, peace and safety of ye said province, and ye raising and imposing taxes, customes, duties, or other charges whatsoever, shall be and are hereby referred to ye order, prudence, and determination of ye governor and freemen of ye said province, from time to time.

SECOND ADDRESS.

After having made the annual report required by the constitution, I have in strictness performed my duty. Yet I feel a disposition to trespass again upon your time, in presenting some considerations on the character and practice of our bar.

The slow progress of suits—the length of time that generally intervenes between the commencement and the termination of a judicial controversy, even of moderate importance, are loudly complained of.

It is considered that the parties suffer and that the profession does not gain by these delays.

There have recently been several meetings on this subject, and the variety of the plans that have been suggested proves the difficulty of the remedy.

But reformation is always an arduous—often a dangerous task.

The redress of our error sometimes creates another, and the close pursuit of one object sometimes closes our eyes in respect to others of equal importance. A strong necessity will however justify it, and will alone justify it.

Mere rapidity of procedure, unaccompanied with a reasonable time for reflection and preparation, and unaided by the application of sound legal principles, may indeed gratify the impatience of the client and perhaps the avidity of the lawyer, but would little tend to advance the science of jurisprudence.

It is of the first importance to ourselves and to our country that our system of law—raised with so much care and involving so much interest—should receive only those alterations which gradually result from mature experience and sound judgment—that it should be thoroughly understood, and cautiously and faithfully administered.

In my former address I pointed out the want of some more convenient mode of enforcing the principles of equity—the remedy for which cannot be attained without the intervention of the legislature.—In the present instance I propose to consider certain points more immediately within our own power.

It is interesting to inquire what is the influence of our modes of practice in the promotion of professional knowledge, the formation of professional character, and the progress of forensic proceedings.

These considerations will at present be taken up in two points of view.

1, It is not peculiar to Pennsylvania, but is the general habit throughout the United States to combine the two capacities of counsel and attorney.

The Supreme Court of the United States, the State of Massachusetts and its former adjunct Maine, New York, and New Jersey, form the only exceptions within my knowledge.

The distinction has subsisted in England at least from the reign of Edward I. (Stat. 1, west. 2.)

The principal reason urged in favour of it is that the institution of a suit and all its parts preparatory to the trial, are more attentively and effectively conducted in this manner than when the whole is to be the work of one person.

It is a just observation in relation to all mechanical arts, that the subdivision of labour produces superior excellence in the specific parts—and the same rule may hold good in many instances of the employments of the mind; but in the science of law, the division now under consideration, constitutes less a matter of importance than of occupation.

It is less the approbation of intellect than of time. The attorney knows nothing which the barrister does not know—he performs nothing which the barrister, were he willing to bestow his time, could not perform. Indeed for every thing out of the common road of pleading, he uniformly throws himself on the guidance of the barrister, who has devoted himself to this branch of the general science.

For in England the principle of subdivision prevails among the members of the bar itself.

The instance last mentioned is in point—Pleadings, founded, as Sir William Jones justly observes, on the nicest and soundest rules of logic, often requiring the best efforts of the mind, are considered so important as to form a particular

school. They lead to habits of close attention and anxious precision, and thus assist in qualifying the party to enter the halls, which Gray describes in one of his beautiful Latin odes:

> "*Lis ubi laté sonat et togatum,*"
> *Æstuat Agmen.*

but the abstraction from the other branches does not tend to furnish the practical knowledge of men and manners conducive to the formation of a Nisi Prius lawyer.

In other respects there are also similar separations—Marriage settlements, trusts, wills by proprietors of large estates, and similar instruments, form a specific subject of employment to those who were termed conveyancing counsel. Among these Booth and Fearne, Powell and Shadwell, were the leaders of modern times.

The last mentioned, who by his abstinence from public exhibition, through the medium of the press, has obtained less celebrity than the others, was a man whose closeness of application formed one evidence of the superiority of his powers.

Admitted to his intimacy though considerably younger, I always found him at his chambers enveloped in parchments, traversing with keen eye and deep reflection the long mazes of complicated titles, or comparing the tissue of trusts and contingencies, with facility and precision.

His son now practices in Chancery, which presents another of the many divisions of the English bar.

The doctors of civil law appropriate to themselves the ecclesiastical and maritime courts—No talents however splendid, and no desire however great can gain admission there, without the appendage of L. L. D. to the name.

So the practice in the Court of Common Pleas, although complained of so long as the time of Charles II, in a treatise attributed to Sir Matthew Hale, (published by Hargrave) is still confined to a select number entitled to wear coifs.

Without pursuing the subject further it is sufficient to say, that the inveterate principle of subdivision so pervades the

profession there that he who is requested to undertake any business out of what he deems his proper sphere generally declines it; but this does not often happen. It is the attorney, (applied to in the first instance) who selects the counsel; and he knows to whom to apply.

Before we leave this part of the subject it may not be improper to notice how dependent the counsel is on the attorney in reference to trials of issues in fact.

The attorney prepares the case, furnishes and methodises the papers, examines the witnesses, frequently collects the authorities, and makes out the brief, on which the counsel is obliged implicitly to rely. If the attorney's views are erroneous or his preparations incomplete, there is seldom a sufficient interval for correction; the defects are without a remedy, and the interests of the party proportionally suffer.

Opposed to this view of the English practice, let us consider our own.—We have to examine and contrast its character and effects, and conclude whether it is or is not advisable to retain our usual and indiscriminating habits of employment.

With us the term lawyer means a *genus* not a *species.*

Liable to be called on in every branch of business connected with the profession, it is necessary that the American lawyer should be qualified for all—he is not merely a Chancery lawyer, nor a civilian, nor a special pleader, nor a Nisi Prius lawyer.

He forms a living and a daily refutation of the opinion that the science is too comprehensive to be all undertaken by one man. Nor can it be justly asserted that the extensiveness of the task produces a superficial or defective performance of it.

In truth, the extent of intellectual capacity is never ascertained till it is put to an extreme trial.

He who has doubted his own ability is sometimes surprised at his own success.

An English lawyer of the first rank would probably deem it impossible to do justice to the multiplied and various duties which would be exacted of him if he migrated with intention

to practice the law among us. Yet we are all educated with a view to the transaction of every description of jurisprudence.

And we may with national pride take up the catalogue of our predecessors as proof of the success of our general system.

To mention the living (honourably and eminently endowed as our bar now is) would be invidious; but we are not forbidden to explore the tomb, to bring from their ashes departed genius and spirit,—not only to support the general principle, but to serve as models for youthful imitation, and incentives to dignified and useful exertion.

It is not without a trembling hand that I shall venture to recall to some and to present to others a few of those names of which I have a recollection, more or less perfect, but assisted by accessible sources of information.

At the era of our Independence the bar of Philadelphia possessed among others a Wilson, a Sergeant, and a Lewis, an Ingersoll, an Edward Biddle, and a George Ross.

Mr. Chew was one of the prominent characters of earlier times. In 1772 he was preferred to the bench. Perhaps no one exceeded him in an accurate knowledge of common law, or in the sound exposition of statutes—His solid judgment, tenacious memory, and persevering industry rendered him a safe and steady guide. At the bar his language was pertinent and correct, but seldom characterised by effusions of eloquence—his arguments were close and frequently methodised on the strict rules of logic—his object always seemed to be to produce conviction, not to obtain applause.

But in those times the sphere of the lawyer was somewhat limited. In provincial courts no great questions of international law were discussed—no arguments on the construction of treaties—no comparisons of legislative powers with constitutional restrictions—even admiralty cases had little interest—every thing great and imposing was reserved for the mother country. Till the ebullitions produced by the stamp act, political interests were local and confined. Pennsylvania

was divided between two parties, that of the proprietaries and a considerable section of the people.

Two lawyers, Galloway and Dickinson, took active parts in this controversy. Each published a speech which he had delivered in the legislative assembly; and it was remarkable that the introduction to each (one composed by Dr. Franklin, who co-operated with Galloway in opposing the proprietary interest, and the other by Dr. Smith, the coadjutor of Dickinson,) were at the time more admired than the principal compositions. Yet they were both men of talents.

Of Galloway's manner I have no personal knowledge; from inspection of the dockets his practice appears to have been extensive. He adhered to the royal cause, and migrated to England, where, after exciting considerable public attention, by attacks on the conduct of Sir W. Howe in this country, he remained till his death.

Very different were the opinions and procedure of Dickinson. At the commencement of our difficulties with Great Britain he displayed his powers with fervour and courage in defence of what he deemed his country's rights. Assuming the title of *a Pennsylvania farmer*, he assailed with a due proportion of learning and an irresistible cogency of argument the unjust attempt of the British legislature to impose internal taxation on the colonies.

These publications had the happiest effect. The resistance which seemed at first to be founded rather on natural impulse than deliberate research was clearly shown, not only to be meritorious in itself, but justifiable under the laws and constitution, by which all British subjects ought to be governed.

Of Dickinson's manner of speaking I have some recollection—he possessed, I think, considerable fluency, with a sweetness of tone and agreeable modulation of voice, not well calculated however for a large audience. His law knowledge was respectable, though not remarkably extensive, for his attention was more directed to historical and political studies. In his defensive publications against the attacks of Va-

lerius, in 1783, the man of taste will be gratified by a pure and elegant style, though the statesman must discover some political errors. Wholly engaged in public life, he left the bar soon after the commencement of the revolution.

At this period a new band arose

> "*Occursus hominum, cujus prudentia monstrat,*
> "*Summos posse viros, et magna exempla daturos,*
> "*Vervecum in patriâ—nasci.*"
>
> Juv. Sat. X. v. 48.

They contributed with other instances to prove, notwithstanding the arrogance of European prediction, that America, even at the instant of putting on the toga virilis was equal to the duties of mature and accomplished man.

I have already given some names, I will more particularly describe two or three others.

Perhaps few of those now present can recollect Wilson in the splendour of his talents, and the fulness of his practice.

Classically educated, and in the outset employed as a tutor in a public seminary, his subsequent success in a narrow circle of country courts, encouraged him to embark in the storm which after the departure of the British troops agitated the forum of Philadelphia.

The adherents to the royal cause were the necessary subjects of prosecution, and popular prejudice seemed to bar the avenues of justice.

But Wilson, and Lewis, and George Ross, never shrunk from such contests, and if their efforts frequently failed, it was not from want of pains or fear of danger.

Other questions of the highest moment also became the daily subjects of forensic discussion, questions for which previous study no doubt had qualified them, but with which no previous practice had familiarized them.

In respect to them, Wilson soon became conspicuous. The views which he took, were luminous and comprehensive. His knowledge and information always appeared adequate to the highest subject, and justly administered to the particular aspect in which it was presented. His person and manner were

dignified, his voice powerful, though not melodious, his cadences judiciously, though somewhat artificially regulated.

His discourse was generally of a reasonable length; he did not affect conciseness nor minuteness, he struck at the great features of the case, and neither wearied his hearers by a verbose prolongation, nor disappointed them by an abrupt conclusion.

But his manner was rather imposing than persuasive, his habitual effort seemed to be to subdue without conciliating, and the impression left was more like that of submission to a stern, than a humane conqueror.

It must, however, be confessed, that Mr. Wilson on the bench, was not equal to Mr. Wilson at the bar, nor did his law lectures entirely meet the expectation that had been formed.

The talents of George Ross were much above mediocrity. His manner was insinuating and persuasive, accompanied with a species of pleasantry and habitual good humour. His knowledge of the law was sufficient to obtain respect from the court, and his familiar manner secured the attention of the jury. But he was not industrious, and his career after the commencement of the revolution was short.

The powers of Reed were of a higher order. His mind was perspicacious, his perceptions quick, his penetration great, his industry unremitted. Before the revolution he had a considerable share of the current practice. His manner of speaking was not, I think, pleasing; his reasoning, however, was well conducted, and seldom failed to bear upon the proper points of controversy. When he had the conclusion of a cause, he was formidable. I have heard an old practitioner say that there was no one at the bar whom he so little liked to be behind him, as Joseph Reed.

Bradford was the youngest of those who flourished at this active and interesting period, and his history merits the attention of the younger part of my brethren, as indicating that however discouraging the prospect may be, one should never despair.

I have understood that for three or four years after his admission he had scarcely a single client, his circumstances were so slender and his hopes so faint that he had at one time determined to relinquish the profession and go to sea, but his abilities, though known to few, were justly appreciated by Mr. Reed, then president of the Supreme Executive Council.

On the resignation of Mr. Sergeant, in 1780, he was unexpectedly appointed attorney-general. At that time the office required no feeble hand. The executive administration was involved in the most serious responsibilities. The ability of his predecessor had been eminently useful to them. If Bradford had proved unequal to its duties, the appointment would have covered both him and the administration with disgrace; if otherwise, it elevated him to honour, while it highly promoted the political interests he belonged to—the latter was the result.

Those of his brethren who had only noticed him as a mute and humble attendant on the courts, now watched his progress with political if not professional jealousy, and soon perceived with surprise the first displays of eloquence in a style not common, of knowledge not suspected, of judicious management not frequent in youth.

He advanced with a rapid progress to an eminence of reputation which never was defaced by petty artifices of practice or ignoble associations of thought; his course was lofty as his mind was pure; his eloquence was of the best kind; his language was uniformly classical; his fancy frequently interwove some of those graceful ornaments which delight when they are not too frequent and do not interrupt the chain of argument.

Yet his manner was not free from objections: I have witnessed in him what I have occasionally noticed in the public speeches of Charles Fox—a momentary hesitation for want of a particular word—a stopping and recalling part of a sentence for the purpose of amending it: nor was his voice powerful nor always varied by those modulations of which an experienced orator knows the utility.

His temper was seldom ruffled and his speeches were generally marked by mildness. The only instance in which I remember much animation was in a branch of the case of Gerard *vs.* Basse and Soyer, which is not in print. The principal case is in 1st Dallas, 119; he was concerned for the unfortunate Soyer.

At present I shall not proceed with those imperfect delineations. There yet remains enough to crowd the canvas of a future picture—and another pencil may perhaps do more justice to them.

There were men whom we would not have feared to oppose to an equal number from the excellent bar of Westminster Hall; and all these men, with the high and dignified duties of counsel, united the performance of all the minutiæ of an attorney's practice.

I have mentioned industry as part of the eminent qualifications of most of them. It is a moral virtue, and the useful companion of the highest natural talent. Gerard, a Scotch writer, defines Genius to be the quantity of application which it is in the power of one to bestow. In these terms the definition is too narrow, but it may be justly said, that the greatest quantity of application may be bestowed by the individual who possesses the most genius.

Young people are sometimes inclined to think that habits of close application are the evidence of dullness; but the necessity of application to apprehend, and its utility to subdue a question are very distinct.

Whose genius transcended that of Newton? but he used to say that whatever reputation he had was due to his industry.

This may perhaps be received as evidence only of his modesty. But Locke, in moral philosophy not less famed, has given us the details of his own mode of labour, in his admirable paraphrase of St. Paul's epistles.

He tells us that he made it a rule to read over the whole epistle at one time—then a second, third, and sometimes a fourth time; and when he thought he fully understood it, he

proceeded to take up the main parts, form his synopsis, and afterwards proceed to particulars.

It does not appear that these habits ever intermitted with those illustrious characters, the evenings of their life were not disgraced by the insufficiencies of voluntary inaction.

In the celebrated and unfortunate author of the *Essay on Contingent Remainders,* the electrical effect of the first appearance of which I well remember, we have a melancholy instance on the opposite side.

Some years before his death, a disposition for country amusements, and particularly the trifling employment of angling seduced him every summer from his desk, and returned him in the autumn with a total repugnance to business.

He grew at last incapable of professional exertion, and miserable at the sense of his incapacity.

His inferiors gradually supplanted him; he grew listless, inert, and despondent; his health gave way, and he died in poverty.

No condition of life can be more miserable than that of a man who feels the evil of sloth, without having the power to break asunder its fetters.

On the other hand, habitual industry, while it tends to sharpen and invigorate the mind, constitutes a great part of the enjoyments of life, and of course it forms no objection to the union of all the various branches of our profession, that some additional labour results from it.

But reasons of a more general nature may be found in favour of it. As a matter of public policy, perhaps of national interest, it appears to me that a separation of the attorney and the counsel is not advisable.

The bar is the seminary of statesmen. In no other class are the same developments of natural character by an appropriate scientific education to be found.

But, create the division of mere attornies, of men educated for and confined to the almost mechanical parts of the business of the law, you will find no materials from which to form a statesman there.

The second head to which I proposed to confine these remarks, is one which is in some degree connected with the general bearing of the first, but more immediately relates to the means of obviating those delays which so often are complained of.

Inconveniences are occasionally felt from the absence of gentlemen engaged in other courts when a trial is called on. The courtesy of the bar generally predominates in favour of accommodation, but the court is often impatient, and a trial is lost for the term.

It has been suggested as a remedy that the practice should be divided, and that counsel should select, and confine themselves to a particular court.

This, as I have observed, is the course adopted in England, and in some respects it might be useful here.

It would at least prevent *this* cause of delay; but the combined duties of a Pennsylvanian lawyer create an obstacle to the plan.

The relations between counsel and client are with us more intimate, extensive and personal, than that which exists between counsel, or even attorney and client, in England.

There, the attorney is, indeed, the first recipient of business, but if the case assumes a Chancery aspect, it is assigned over to a solicitor, (few act in both capacities) and to him the client transfers his communications and his confidence, and it is well known, that there are attornies of different courts who exclude from participation of their profits those who habitually attend on other courts.

The counsel are in a degree removed from the client, with whom they have little, if any intercourse.

But here a general confidence is reposed in the counsel, on whom the client relies for advice within doors, and for exertion, when necessary, abroad; and it would create surprise as a novelty, and perhaps complaint as an injury, if he refused to appear as an advocate in any court where his client's interests were at stake.

This division, therefore, cannot take place, unless that previously mentioned precedes it.

On another and a more general ground an objection also arises.

It is useful that a common interest should exist among us.

The support of the pure and lofty character of our profession is best effected by the facilities of mutual inspection and the preservation of a common harmony; by identification in the whole and not in small masses; when all unite to uphold the bar, and not the separated parts of the bar.

By establishing divisions among different courts, the general interest would be diminished if not destroyed. The practitioners confined to one court would become a sort of distinct body, having their own feelings and affections, and perhaps gradually imbibing even a disposition to hostility against those who adhered to other courts. Thus we should lose the moral advantages of a compact and consentient bar.

Public confidence would decline, and on that would follow the diminution of our ability to be useful to the public.

The conclusion seems to be, that in these two points no alteration is desirable.

But if an evil exists, are we to attempt no remedy? Is the fear of injury from innovation to preclude all efforts of redress?

Surely not.

It is acknowledged that in morbid affections it is useful first to ascertain, if possible, what has produced the disease before the proposed remedies are applied. What then is the predominant cause of these delays?

In addition to some minor points, which I shall not detain you by mentioning, I incline to think that it is to be found in the length, or rather the manner of our speeches.

On the trial of issues in fact, the examination of witnesses does not generally consume more time with us than in England. Indeed their cross examinations are commonly more dilated than ours. But speeches of the great length to which

we are accustomed, are there unknown. An hour is deemed a large space of time for an address to the jury.

The same moderation is carried into the discussion of arguments in Bank.

Nine eminent counsel were engaged in the celebrated case of Lindo *vs.* Rodney, which I had the pleasure of hearing. It occupied but two mornings. With us it would probably have employed as many weeks. The great cause of delay with us is, The introduction of books—reading entire cases, and discussing every case that is read; a practice entirely unknown there.

But their habits are not inconsistent with the full expansion of professional information, or its necessary adaptation to the merits of the case.

The previous preparation, the condensation of argument, the rejection of trite topics, and wanton digression on the part of the bar, stimulate the bench to similar procedures.

And thus, in fact, science gains, as more time is bestowed in its acquisition, and less in its display.

Yet how can we effect this object?

By the interventions of the bench or the agreement of the bar?

If the act of the bar, it should be a general understanding and honourably adhered to, otherwise the individual who confines himself to a short space, while his antagonist indulges himself in the ancient habits of prolixity, would probably incur the censure of his client, who, if unsuccessful, would impute his loss to his counsel's abstinence; or, if a gainer, might attribute his success to the merits of his cause, not of his advocate.

Ought it to be the act of the bench, according to a proposition now under consideration in another place?

This is a question of more importance than at first sight strikes the mind.

It is not known to me to be the usage at present of any country in Europe, certainly not in the United States.

That it once existed abroad will however be recollected.

In the courts of a polished nation of antiquity the *clepsydra*, under the direction of the court, and the charge of a particular officer regulated the duration of the speech.

The practice of Athens was irregularly followed in Rome. Pliny gives us the most information on the subject.

If one length of time was indiscriminately applied to every trial, it was unreasonable and absurd.

It was less exceptionable if left to the discretion of the judge, according to the nature of the case.

In any shape, however, the proposition is liable to objections. 1, It is doubtful whether, without the voluntary submission of the bar, the court could enforce such restrictions unless with the sanction of the legislature, and perhaps upon a critical inquiry, it might be further doubted, whether the legislature could confer on the court a compulsory power of this kind, consistently with the principles of the constitution.

2, The power may be injudiciously exercised—a case requiring full discussion, may be injuriously abridged.

To this I am not aware of an answer, except that the same objection may be applied to every movement of a court.

3, It may not be satisfactory to the parties.

4, But the last seems to me a more weighty objection.

It would degrade the character of the profession.

It would convey the idea that a lawyers' speech was an inconvenience, which ought to be reduced as much as possible, and from causing it to be believed that it was of little use; the next step would be to intimate that it was of no use at all.

From some of the epistles of Pliny it may be inferred, that after the tyranny of the Emperors commenced, the Athenian practice was occasionally adopted and occasionally relaxed at Rome; but that during the republic there was no restraint.—The freedom of cansidical oratory like the freedom of the press is always obnoxious to absolute power.

While we retain the elementary spirit of a republic and the sense of equal rights, let not our profession ask for fetters not imposed on others, and thus presenting the ignoble spectacle

of self-abasement, contribute to impair the political fabric which owes to us some portion of its excellence.

The result is, that it ought to be left to ourselves alone to redress the evil. The fullness of discussion ought not to be restrained; but the manner of discussion may be usefully reformed, so that we may gain in point of time without losing in point of science.

At a meeting of "*The Associated Members of the Bar of Philadelphia,*" held on the 3d of January, 1822,

Resolved, That the thanks of this Association be tendered to the Chancellor for the luminous essay just communicated, and that he be requested to allow a copy to be made, to be deposited and preserved among the archives of the Association.

Extract from the minutes.

G. M. DALLAS, SECRETARY.

At a meeting of "*The Associated Members of the Bar of Philadelphia,*" held on the 1st of December, 1823,

Resolved, That the thanks of this Association be presented to the Chancellor, for the excellent discourse delivered by him this evening, and that a copy of it be requested, to be filed among our archives.

Resolved, That a Committee of three be appointed to wait upon the Chancellor, and to request his permission to publish his address, delivered at a stated meeting in June and this evening, or such part of them as he may think proper.

True extract from the minutes.

G. M. DALLAS, SECRETARY.